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C O N F I D E N T I A L SECTION 01 OF 02 PARIS 001519

SIPDIS

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TAGS: [PREL](#) [KJUS](#) [PHUM](#) [UNSC](#) [SU](#) [FR](#)
SUBJECT: SUDAN/DARFUR: EXPLORING THE POSSIBILITY OF
SUSPENDING AN ICC INDICTMENT TO IMPROVE SUDANESE BEHAVIOR

REF: A. KHARTOUM 1140
[1](#)B. PARIS 1369
[1](#)C. USUN 693

Classified By: Acting Political Counselor Andrew Young, 1.4 (b/d).

[1](#)1. (C) SUMMARY: The French have discussed with Sudan FM Deng Alor things that Sudan could do, in its own interests, that might alleviate pressure stemming from a possible ICC indictment of President Bashir, but have not promised that if Sudan behaved in a certain way that France would try to stave off such an indictment. The GOF is waiting to see what the ICC does and how Sudan responds to the advice France and, separately, the UK have provided. The French believe it is possible to secure tangible improvements in Sudanese behavior to an extent that may warrant consideration of a suspension of an eventual indictment, under Article 16 of the Rome Treaty. The U.S., UK, and France are scheduled to discuss this further in London on August 23. END SUMMARY.

[1](#)2. (C) MFA Sudan desk officer Frederic Bouvier on August 4 reviewed the Sudan/ICC issue (ref A) in the context of Sudan FM Deng Alor's visit to Paris on July 21. Deng Alor had been in Paris on July 16 (ref B), had gone to Dakar for the Darfur Contact Group meeting, returned to Paris for the July 21 meeting, went to London, and then returned to Sudan. Deng Alor met with FM Kouchner on July 21.

FRANCE URGES COOPERATION BUT IS NOT OFFERING A "DEAL" TO SUDAN

[1](#)3. (C) Bouvier said that Kouchner stressed the need for Sudan to cooperate on a number of fronts and that doing so would be in Sudan's interest, especially in view of activity at the ICC. Kouchner said that Sudan could improve its standing at the ICC and in the world's eyes by, for example, cooperating with the ICC on the two Sudanese already under indictment, improving cooperation with UNAMID, making concrete progress on improving conditions in Darfur, and talking to rebel elements in order to reach a political settlement. Kouchner also said that Khartoum should carry out its obligations under the North-South CPA.

[1](#)4. (C) Bouvier stressed that Kouchner did not offer Deng Alor a "deal," i.e. that in return for Sudan's doing certain things, France would try to block an ICC prosecution of Bashir. The issue was not ripe. Prosecutor Moreno-Ocampo had asked for an indictment, but the court itself would not rule until the October/November period. Talk of scuttling a prosecution now was thus premature.

PARALLEL FRENCH AND UK EFFORTS TO PRESSURE SUDAN

[1](#)5. (C) Bouvier said that France had been consulting with the UK on how to handle this issue but was not "coordinating" with the UK in the sense that they were working together to achieve certain ends. "We share many ideas with the UK and

are moving on parallel tracks, but we are not working jointly." Bouvier said. (NOTE: Paris UK emboffs made similar comments during a July 31 meeting. END NOTE.)

¶16. (C) Deng Alor was in a receptive mood and did not plead with the French to block ICC action, according to Bouvier. Deng Alor said that he personally believed that Sudan should do many of the things Kouchner suggested, but that he would take the message, along with the UK's message, back to Sudan for consideration by the "big chiefs." Bouvier said that France was waiting for Sudan's response. He said that the UK and France had wanted to give the Sudanese a few ideas, in order to have them come forward with proposals, rather than have the UK and France provide something definite. One reason was to avoid the appearance that the UK and France were showing Sudan a way to bargain its way out of an ICC prosecution, which could serve as an unfortunate precedent.

TRIAL BALLOON: SUSPENSION OF AN ICC PROSECUTION THAT FOSTERS TANGIBLE ACTION

¶17. (C) Bouvier said that France was in a "wait and see" mode and that events could well determine where this issue should go. First, the ICC had to act. Then, Sudan would respond, perhaps with a list of things it would do. Bouvier said that it was possible (stressing the word "possible") that Sudan could promise to do enough that it would be in the greater interest for France and others to consider seeking a suspension of the ICC prosecution under Article 16 of the Rome Treaty, which permits suspensions for up to 12 months, with the possibility of renewal. "Let's say we suspend it for 12 months, with a review every three or four months. We

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could use that review to ensure that they keep doing what they said they would. This would help us achieve our ends and also preserve our prerogatives with the ICC," he reasoned. "If they don't cooperate, we end the suspension and the ICC goes into action."

¶18. (C) Bouvier repeated that this scenario was still speculative. "We are not saying now that a suspension is in order, simply that events could develop in a way that suspending ICC action could be in everyone's best interest." Bouvier said that the French did not provide Deng Alor with a non-paper. According to Bouvier, the "Franco-British" proposal that Deng Alor mentioned upon returning to Khartoum (a copy of which may have been the document he provided to Embassy Khartoum, ref A) was his own written synthesis of what he had heard in Paris and London.

¶19. (C) Bouvier remarked that many Africans and other non-Western countries were already clamoring for blocking ICC action. This would likely increase over time, and perhaps become a big issue at the September UNGA. Bouvier said the French were a bit disappointed in the EOJ the U.S. gave after its abstention on the UNSC vote on renewing UNAMID's mandate (ref C). He said that the EOJ's very firm position in support of the ICC could put the U.S. in a position where it might be difficult to exercise flexibility at a later stage.

P-3 DISCUSSION

¶10. (C) Bouvier said that French Presidential Deputy Diplomatic Advisor Bruno Joubert and Kouchner Cabinet Advisor Eric Chevallier discussed Deng Alor's visit and the ICC issue in a July 31 telephone conference call with Sudan Special Envoy Williamson. Bouvier said that the UK would host in London on August 23 a meeting to continue the discussion, with the U.S. and French participating. The GOF MFA and Presidency would both be represented at the meeting, which would be divided into two sessions, one featuring the P-3 plus the new Sudan mediator, Burkina Faso FM Djibril Bassole, to discuss Sudan generally, and a second one with only the P-3, to focus on the ICC issue.

COMMENT

¶11. (C) We want to stress again that Bouvier was not saying that we should now start making a deal with Khartoum over the ICC issue. He was suggesting that events down the road could unfold in such a way that we may be in a position later to consider invoking an Article 16 suspension (which could always be canceled) if Sudanese behavior changed to the degree that a suspension might be in everyone's interest.
END COMMENT.

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